

EXHIBIT 12

C O N F I D E N T I A L

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Adv.Pro.No.
08-01789(BRL)

Debtor.

-----x
IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

VOLUME II

Plaintiff,

Adv.Pro.No.
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.
-----x

DEPOSITION of MICHAEL E. AUTERA, JR.,
as taken by and before NANCY C. BENDISH, Certified
Court Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, at the offices of
BAKER & HOSTETLER, 45 Rockefeller Plaza, New York,
New York on Wednesday, October 19, 2011, commencing
at 10:32 a.m.

Page 162

1 sale there was a 9,000-dollar profit?
 2 MR. ANELLO: You're saying the first
 3 page reflects after the sale --
 4 MR. POWERS: I'm trying to tie them
 5 together.
 6 Q. Is this not the right transaction to
 7 tie this together?
 8 A. This could be one of the
 9 transactions. The proceeds of 1,771,000 would be
 10 part of the 9,000 -- would be part of the
 11 calculation to come up with the \$9,101 of proceeds.
 12 Q. Right. And it could be the entire
 13 methodology if there's nothing else reflected in
 14 this particular monthly statement of a transaction
 15 in that stock? Or no, because in fact it could have
 16 been in earlier purchase and sales of American
 17 Express?
 18 A. Correct.
 19 Q. So this is really a report that's for
 20 an annualized basis, cumulative over time?
 21 A. The P & L numbers are cumulative from
 22 whatever period. If it's the year-to-date, it's
 23 since January 1st. If it's quarterly, it's from the
 24 first day of the quarter. If it's monthly it's the
 25 first day of the month and if it's daily, it's that

Page 163

1 day.
 2 Q. So this would be reflective then, if
 3 you look at the second page of this P & L, of this
 4 exhibit, it shows that the only numbers have, under
 5 the market value column, treasuries, that the
 6 positions as of October 31st were all in treasury
 7 securities at that time. Do I understand now what
 8 this purports to represent?
 9 A. Right. The only positions that this
 10 report shows as of October 31st, 2000 would be a
 11 small Fidelity cash reserve amount and then
 12 treasuries.
 13 Q. Did you have any conversations with
 14 Mr. Merkin -- withdrawn.
 15 Did you say you have or have not
 16 spoken to Mr. Madoff?
 17 A. I've spoken to Mr. Madoff. I've been
 18 in a meeting with him.
 19 Q. How many different meetings?
 20 A. Two that I recall.
 21 Q. When?
 22 A. One was in the early 1990s when the
 23 account was first opened, and the next meeting that
 24 I recall was in November of 2008.
 25 Q. And in that first meeting what was

Page 164

1 discussed?
 2 A. I don't recall specifically.
 3 Q. Which account was being opened at
 4 that time?
 5 A. To my recollection it was the Gabriel
 6 account and an Ariel account.
 7 Q. Who was present?
 8 A. I went over to their offices with
 9 Mr. Merkin.
 10 Q. Anyone else present besides
 11 Mr. Madoff?
 12 A. I believe I met Frank DiPascali at
 13 that meeting.
 14 Q. Did he identify him, who
 15 Mr. DiPascali was?
 16 A. I don't recall specifically, but I
 17 knew that Mr. DiPascali would be the one I would be
 18 working with on kind of the back office things
 19 associated with the account.
 20 Q. When you next spoke -- excuse me, met
 21 with Mr. Madoff in November 2008, where was that?
 22 A. Where was it?
 23 Q. Yes.
 24 A. It was in the Madoff offices.
 25 Q. Who was present?

Page 165

1 A. Mr. Merkin, Mr. Madoff and four
 2 representatives from one of Ascot's limited
 3 partners.
 4 Q. Which limited partner?
 5 A. Union Bank Privee.
 6 Q. What was the purpose of the meeting?
 7 A. The meeting was set up so that the
 8 people from UBP could meet and ask questions of
 9 Mr. Madoff.
 10 Q. Why was that set up for that purpose?
 11 A. Prior to the meeting the UBP people
 12 had requested some information regarding Ascot and
 13 Madoff in a letter to, I believe Mr. Merkin.
 14 Subsequent to that there was a call
 15 with the UBP people in which Mr. Merkin provided
 16 information and answered questions to them. At some
 17 point during that conversation Mr. Merkin offered to
 18 have them come, arrange a meeting with Mr. Madoff if
 19 they wanted to do that.
 20 Q. What information were they seeking
 21 from Mr. Madoff and Mr. Merkin?
 22 A. Sitting here I don't recall
 23 specifically. There were various questions that
 24 they had.
 25 Q. How long was the meeting?

27 (Pages 162 to 165)

<p style="text-align: right;">Page 166</p> <p>1 A. Couple of hours, two hours.</p> <p>2 Q. How much money did UBP itself or with</p> <p>3 its clients have invested in the funds?</p> <p>4 A. I don't know exactly.</p> <p>5 Q. Approximately?</p> <p>6 A. My recollection is they were, Ascot,</p> <p>7 either Ascot Partners or Ascot Fund combined, the</p> <p>8 largest investor. Again, I don't recall exactly.</p> <p>9 Several hundred million dollars.</p> <p>10 Q. What issues or concerns had they</p> <p>11 expressed -- withdrawn.</p> <p>12 Were you present when they expressed</p> <p>13 issues or concerns to Mr. Merkin with respect to the</p> <p>14 account and the use of Mr. Madoff and his firm?</p> <p>15 A. I'm not aware of any issues or</p> <p>16 concerns that they had. Again, they sent a letter</p> <p>17 asking questions.</p> <p>18 Q. But presumably they weren't satisfied</p> <p>19 with those answers and therefore that precipitated a</p> <p>20 meeting; would that be fair?</p> <p>21 A. I don't know if they were satisfied</p> <p>22 or not. There may have been questions that we</p> <p>23 couldn't -- Mr. Merkin or I couldn't answer.</p> <p>24 Q. Well, was that the case?</p> <p>25 A. I don't recall specifically.</p>	<p style="text-align: right;">Page 168</p> <p>1 respect to the option counterparties?</p> <p>2 A. They wanted to know whether or not</p> <p>3 the options were done over the counter or on</p> <p>4 exchanges, and just what sorts of -- I recall that</p> <p>5 he spoke about performance guarantees that he</p> <p>6 required of all his option counterparties.</p> <p>7 Q. And what did Mr. Merkin say about --</p> <p>8 excuse me. What did Mr. Madoff say about these</p> <p>9 comments?</p> <p>10 A. I recall he said he had a diverse</p> <p>11 group of 20 or so counterparties and that he did</p> <p>12 require certain performance guarantees from them.</p> <p>13 Q. Did he indicate what kind of</p> <p>14 guarantees?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Did he indicate the names of the</p> <p>17 counterparties?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Was he asked for the names?</p> <p>20 A. I'm not sure.</p> <p>21 Q. Do you have any reason to know why he</p> <p>22 didn't volunteer any of the names?</p> <p>23 A. No.</p> <p>24 Q. What else do you recall was discussed</p> <p>25 during that meeting on the topic of option</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. So you don't recall whether or not it</p> <p>2 was because you didn't know the answers to the</p> <p>3 questions or whether or not they were unsatisfied</p> <p>4 with the answers?</p> <p>5 A. I don't recall them being unsatisfied</p> <p>6 with the answers. Again, I think Mr. Merkin offered</p> <p>7 to set up a meeting, a direct meeting between them</p> <p>8 and they accepted that.</p> <p>9 Q. Okay. What questions do you recall</p> <p>10 being asked by UBP?</p> <p>11 A. At the meeting?</p> <p>12 Q. At the meeting, yes. Thanks for</p> <p>13 clarifying that.</p> <p>14 MR. ANELLO: The meeting with Madoff?</p> <p>15 MR. POWERS: Yes. Thank you.</p> <p>16 A. I recall they asked about the option</p> <p>17 counterparties. That was discussed. They asked</p> <p>18 about the auditor of the Madoff firm. Again, I just</p> <p>19 don't recall other questions.</p> <p>20 Q. So those are the only two topics you</p> <p>21 recall, asking about the option counterparties and</p> <p>22 the auditor?</p> <p>23 A. Those are the only two I remember</p> <p>24 now.</p> <p>25 Q. What were they inquiring about with</p>	<p style="text-align: right;">Page 169</p> <p>1 counterparties?</p> <p>2 A. Nothing else comes to mind right now.</p> <p>3 Q. With respect to the auditor, what was</p> <p>4 UBP's issue on that?</p> <p>5 A. I don't know if they had an issue.</p> <p>6 They asked why he used the firm that he used. I do</p> <p>7 recall he said they had been the long-time auditors</p> <p>8 for his firm and that he felt the cost and level of</p> <p>9 service of some of the larger public accounting</p> <p>10 firms just wasn't worth it for him.</p> <p>11 Q. Did you have any follow-up --</p> <p>12 withdrawn.</p> <p>13 After the meeting were there other</p> <p>14 conversations you had, Mr. Merkin had with UBP</p> <p>15 concerning the topics discussed at the meeting?</p> <p>16 A. Did I have?</p> <p>17 Q. Um-hum.</p> <p>18 A. My follow-up was more in relation to</p> <p>19 proposed redemptions that UBP had for their</p> <p>20 investments in Ascot. After the meeting, they</p> <p>21 rescinded a large part of those redemption requests.</p> <p>22 So, my role was to just kind of effect those changes</p> <p>23 from the standpoint of revised requests and things</p> <p>24 like that.</p> <p>25 Q. Those requests to be effective when?</p>

Page 170

1 A. December 31st, 2008.
 2 Q. Put it at least 45 days in advance in
 3 accordance with terms of the PPM?
 4 A. Correct.
 5 Q. What portion of -- well, you said a
 6 large portion. Do you recall if they rescinded all
 7 of that or not?
 8 A. No, they didn't. My recollection is
 9 that their original redemption request was for a
 10 very large percentage of their total investment.
 11 Q. Which was, approximately?
 12 A. Again, several hundred million
 13 dollars.
 14 Q. Several hundred million, 300 million?
 15 A. I believe more than that.
 16 Q. Okay, half a million?
 17 A. Probably less.
 18 Q. Okay. Thank you. Somewhere between.
 19 A. After the meeting and speaking to
 20 their operations people, I think they cut back their
 21 redemption requests by more than half.
 22 MR. MENNITT: I'm sorry, what was the
 23 answer; by more than half?
 24 THE WITNESS: By more than half.
 25 Q. And then you know on December 11th

Page 171

1 there was the confession, right? And did they
 2 receive any redemptions subsequent to the
 3 confession?
 4 A. No.
 5 Q. So none of their redemption requests
 6 were satisfied?
 7 A. There were no redemption proceeds
 8 sent out.
 9 Q. Was there ever any discussion raised
 10 by UBP or other investors as to why it was the
 11 monies that were placed at BLMIS were treasuries,
 12 appeared to be treasuries at the end of certain
 13 months? Going back to the exhibit.
 14 A. I do recall that UBP at the meeting
 15 with Mr. Madoff asked about how he timed his
 16 investments into the strategy and out of the
 17 strategy. I believe that was asked.
 18 Q. What was his response?
 19 A. I don't recall specifically, but,
 20 again, I think he described the strategy and
 21 explained that that was the key to his success, was
 22 coming up with the timing.
 23 Q. Looking at page 3 of this document,
 24 there appears to be handwriting. See where it says
 25 last month and then there's some numbers there?

Page 172

1 A. Yes.
 2 Q. Do you know whose handwriting appears
 3 on this page?
 4 A. I believe it's -- I think it's Mike
 5 Achillarre's.
 6 Q. What is this reflective of?
 7 A. I believe the value of Ascot
 8 Partners -- Ascot Funds Madoff account at the end of
 9 the previous month was, he's saying it's 306 million
 10 990 and then on October 1st, I think this means that
 11 an additional 11,900,000 was put into the account.
 12 Q. Okay. Looking right above there,
 13 there are columns off to the middle of the page,
 14 talk about open/closed positions and market value,
 15 quarterly P & L, year-to-date P & L. There's the
 16 number 360 -- is that 367,360 dollars 902 dollars --
 17 let me start again. 367,360 -- let me start again.
 18 367 million 360,902 dollars. Do you see that?
 19 A. That's total market value. It looks
 20 like it's 357.
 21 Q. Okay. Your glasses are more
 22 effective than mine.
 23 That would be the current market
 24 value, right, consistent with what you said before?
 25 A. That would be the total of the

Page 173

1 open -- the market value, the total of the market
 2 value positions on this sheet. So I believe this
 3 speaks as of October 31st.
 4 Q. So these would just be the money
 5 market and the treasuries then, right?
 6 A. Yes.
 7 Q. And then quarterly P & L would be for
 8 the month, purportedly what was profit, right?
 9 714,000, correct?
 10 A. No. It would be the 4 million 884.
 11 The 714 was the P & L -- quarterly P & L only for
 12 the open positions, which would be the treasuries
 13 and the money market.
 14 Q. Right. Okay. So the year-to-date
 15 P & L would be reflective of what? 1,138,000.
 16 A. That would be the year-to-date P & L
 17 for the positions that were open as of this date.
 18 So the treasuries and...
 19 Q. And the closed ones which would
 20 include, for example, the American Express we talked
 21 about earlier, would be the next column and so in
 22 year-to-date there appears to be 37 million plus
 23 profit from those positions, correct?
 24 A. For that period for the positions
 25 that were open at some point during the period and